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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUN 18 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

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IN THE MATTER OF QWEST
CORPORATION'S FILING OF RENEWED
PRICE REGULATION PLAN

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS

DOCKET NO. T-00000A-00-0672
DDECISION NO. 67047

OPINION AND ORDER

BY THE COMMISSION

On July 1, 2003, Qwest Corporation ("Qwest") filed the Qwest Renewed Price Regulation Plan in accordance with the provisions of the Second Revised Settlement Agreement approved in Decision No. 63487 on March 30, 2001. Qwest filed an Amended Renewed Price Regulation Plan on September 26, 2003.

On November 7, 2003, Qwest filed a Motion to Clarify, Or In the Alternative, To Terminate Price Cap Plan. Qwest requested that the Commission clarify that after the expiration of the initial term of the Price Cap Plan, the following conditions apply until the Commission enters an order approving a revised plan or setting new rates for Qwest:

1. No further adjustment of the Price Cap Index for Basket 1 Services will be made pursuant to 2(b) of the Price Cap Plan after March 30, 2004;
2. No further annual reduction in the level of access charges under the Settlement Agreement and the Price Cap Plan will be made after April 1, 2004

- 1 3. The procedures for changes in Qwest's rates and charges, including the hard caps
2 imposed on the specific Basket 1 Services, continue to apply until superceded
3 revised plan approved by the Commission or a Commission order setting new rates
 and charges for Qwest.

4 Alternatively, Qwest requested that if the Commission does not clarify the Plan as it
5 suggests, the Commission should terminate the Plan. After receiving written comments by all
6 interested parties and holding an Open Meeting on January 29, 2004, allowing all interested
7 parties an opportunity for oral comment, the Commission entered Decision No. 66772 on
8 February 10, 2004. In Decision No. 66772, the Commission determined that Qwest was required
9 to make a Basket 1 adjustment on April 1, 2004 for year 3 of the Plan, and was further required
10 under the Continuation Clause of the Plan to make further Basket 1 adjustments until the
11 Commission adopted a new or revised Plan or terminated the existing Plan. The Commission
12 also determined that Qwest was required to make another access charge reduction of
13 \$5,000,000.00 under the Continuation Clause of the Plan.

14 On February 25, 2004, Qwest filed an Application for Rehearing of Decision No. 66772.
15 Qwest's Application for Rehearing was deemed denied by operation of law on March 16, 2004.
16 On March 8, 2004, Qwest filed a Motion to Revise Productivity Factor and Notice of Filing
17 Updated Productivity Analysis and Affidavit of Philip E. Grate on March 8, 2004. Subsequently,
18 a majority of Commissioners requested oral argument on the issues raised in Qwest's Application
19 pursuant to A.R.S. §40-252. The Parties were also given an opportunity to file written comments
20 on Qwest's Application for Rehearing of Decision No. 66772 and Qwest's Motion to Revise
21 Productivity Factor.

22 Written comments were filed by the Commission Staff, the Residential Utility Consumer
23 Office ("RUCO"), MCI, Inc., ("MCI") and AT&T Communications of the Mountain States, Inc.
24 ("AT&T"). Oral argument before the Commission and ALJ Rodda was held on May 4, 2004. In
25 order to allow all parties sufficient opportunity to be heard on any proposed changes to Decision
26 No. 66772, a deadline was established to file proposed amendments to Decision No. 66772 of
27 June 1, 2004. Parties were allowed the opportunity to comment on the proposed amendments on
28 or before June 4, 2004. Proposed amendments were filed by Commissioners Hatch-Miller and

1 Gleason on amendments on June 4, 2004. On June 9, 2004, the Commission convened an Open
2 Meeting to consider the proposed amendments to Decision No. 66772.

3 In its Application for Rehearing, Qwest contends that the Commission misinterpreted the
4 Settlement Agreement and the Plan by (a) requiring Qwest to make additional access reductions;
5 (b) requiring Qwest to make additional Basket 1 price reductions; and (c) eliminating the
6 simplified filing requirements. Qwest claims that the Agreement and Plan are clear that no
7 further switched access charge reductions beyond \$15 million were contemplated. Qwest also
8 argues that there has been no hearing on whether switched access reductions beyond the \$15
9 million are reasonable and necessary, or meet the fair value requirement previously determined
10 under the existing Plan. Qwest also argues that further reductions in the Basket 1 Price Index is
11 also contrary to the Agreement and the Plan, and results in confiscation of Qwest's property in
12 violation of the United States and Arizona Constitutions. Qwest argues that the Continuation
13 Clause provides only for termination of the Plan and for the existing rate levels to be frozen.
14 Qwest further argues that the Staff and Commission are now interpreting the Clause to change
15 what was a clearly 3 year Plan into one with an indefinite term. Qwest nonetheless agreed with
16 AT&T that to the extent ambiguity exists, the Plan cannot be reasonably interpreted as extending
17 beyond a single reduction in April 2004, and that continued reductions into 2005 are simply not
18 authorized.

19 RUCO supported Qwest's Application for Rehearing on the issue of intrastate access rate
20 reductions only. RUCO believes that the Plan calls for only three \$5 million intrastate access
21 charge reductions. However, RUCO argues that with respect to further Basket 1 adjustments, the
22 Plan requires annual Basket 1 adjustments until the Commission approves a new or modified Plan
23 or terminates the existing Plan. In support of its interpretation, RUCO relies upon the language of
24 the Plan itself as well as cross-examination of the parties during the hearing on this matter.

25 MCI argues that the \$5,000,000.00 access charge reduction required by Decision No.
26 66772 is both justified and reasonable and the Commission should not reconsider this portion of
27 its earlier Order. MCI argues that the Price Cap Plan language supports an additional access
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1 charge reduction because it specifically states that further reductions in intrastate switched access
2 service would occur during any subsequent term of the Price Cap Plan. MCI also argues that
3 substantial evidence supports an access charge reduction. MCI notes that both Qwest and Staff
4 testimony filed in the access charge case, which has been consolidated with the price cap case,
5 demonstrates that access charges are well above cost. MCI also argues that since Decision No.
6 63487, there have been significant new events impacting these public policy issues and that the
7 Commission is faced with this emergency interim situation due to Qwest's inability to provide
8 adequate information on a timely basis.

9 Staff believes that Qwest is required to make the April 1, 2004 Basket 1 adjustment under
10 the express terms of the Plan. Staff argues that even if Qwest is correct that the Basket 1
11 adjustment was limited to the initial 3 year term of the Plan, the April 1, 2004 adjustment is the
12 third adjustment expressly required under the Plan's terms for the third year of the Plan. After
13 that, under the Continuation Clause, the Parties agreed that the Plan (including all of its collective
14 terms and conditions) would continue in effect until the Commission approved a new or modified
15 Plan, or terminated the existing Plan. Staff also argues that the Continuation Clause, which is the
16 only clause of the Agreement to address this situation, was inserted to address the very
17 predicament the Commission is now facing, an unexpected contingency that has resulted in a
18 delay in the Commission being able to approve a new Plan for Qwest. Moreover, Staff argues
19 that the delay was caused by Qwest's inability to certify the accuracy of its financial statements
20 until recently and that the ratepayers should not bear the brunt of Qwest having to restate its
21 financial statements.

22 Staff also argues that had the parties intended Qwest's interpretation of the Continuation
23 Clause, they could have clearly stated that the Plan terminates and existing rates remain in place.
24 However, they did not. The Clause clearly states that the existing Plan remains in place until a
25 new or modified Plan is approved. Finally, Staff believes that under the Continuation Clause it
26 could be argued that Qwest would be required to make another access charge reduction.
27 However, since this is a non-essential provision of the Plan and given the intent of the parties, the
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1 Commission had the discretion to require this reduction or not require it. Staff believes that
2 Qwest's confiscation argument is meritless since under the terms of the Plan, Qwest is entitled to
3 a \$5 million increase in the Basket 3 Cap to offset the \$5 million reduction in access charges,
4 making the change revenue neutral.

5 Having considered the arguments, pleadings and positions of the parties, the Commission
6 affirms its earlier determination with respect to the Basket 1 adjustment. We find that even if
7 Qwest's argument that it is required to make the Basket 1 adjustment for the initial term of the
8 Plan only is correct, it is still required under the terms of the Agreement and Plan to make the
9 April 1, 2004 Basket 1 adjustment for the third year of the Plan (April 1, 2003 to April 1, 2004).
10 We believe that further adjustments after April 1, 2004 would be governed by the Continuation
11 Clause of the Agreement and that the Basket 1 adjustment remains in effect as an integral part of
12 the Plan until the Commission approves a new or revised Plan.

13 We, however, reconsider Decision 66772 with respect to further switched access charge
14 reductions. While the Continuation Clause could arguably be read to encompass further switched
15 access reductions, we believe that the intent of the parties was that there would be only three
16 switched access charge reductions under the Plan. We also find that, unlike the Basket 1
17 adjustment, the switched access charge provisions were not an integral part of the Plan, and thus,
18 a legitimate argument can be made that the Continuation Clause did not envision this provision's
19 continuation.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, and
22 having given notice of our intent to reconsider Decision No. 66772 pursuant to A.R.S. §40-252,
23 and having given parties an opportunity to comment upon our proposed changes to Decision No.
24 66772, the Commission finds, concludes and orders that:

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26 **FINDINGS OF FACT**

27 1. In Decision No. 63487 (March 30, 2001), the Commission approved a Settlement
28 Agreement in Qwest's then pending rate case which adopted a Price Cap Plan for Qwest.

1 2. On July 1, 2003, Qwest filed its Renewed Price Regulation Plan in accordance
2 with the provisions of the Second Revised Settlement Agreement approved in Decision No.
3 63487.

4 3. On September 26, 2003, Qwest filed its Amended Renewed Price Regulation Plan.

5 4. On November 7, 2003, Qwest filed a Motion to Clarify, Or In the Alternative, To
6 Terminate Price Cap Plan.

7 5. After considering the written comments filed by Qwest and interested parties, and
8 hearing oral argument thereon, the Commission entered Decision No. 66772 which found that
9 "...until the Commission approves a renewed or modified Price Cap Plan, or orders a termination
10 of the Plan after its term, the Plan, including the hard caps on Basket One Services set forth
11 paragraph 2(c)(1) shall continue in effect." This includes the Plan's terms and conditions relating
12 to adjustments to Basket 1 and switched access charges.

13 6. On February 25, 2004, Qwest filed an Application for Rehearing of Decision
14 66772. Qwest's Application was denied by operation of law on March 16, 2004.

15 7. Subsequently, a majority of Commissioners determined to hear oral argument on
16 the issues raised in Qwest's Application pursuant to A.R.S. § 40-252. By Procedural Order dated
17 April 6, 2004, parties were given until April 16, 2004, to file written comments on Qwest's
18 Application. Oral argument on Qwest's Application was scheduled for May 4, 2004.

19 8. Proposed Amendments to Decision No. 66772 were filed by Commissioners
20 Gleason and Hatch-Miller on May 24, 2004 and June 1, 2004, respectively.

21 9. MCI was the only party to comment on the proposed amendments through written
22 comment filed on June 4, 2004.

23 10. The Commission reaffirms its earlier determination with respect to the Basket 1
24 adjustment in Decision 66772. Even if Qwest's argument that it is required to make the Basket 1
25 adjustment for the initial term of the Plan only is correct, it is required under the terms of the
26 Agreement and Plan to make the April 1, 2004 Basket 1 adjustment for the third year of the Plan
27 (April 1, 2003 to April 1, 2004). Further adjustments after April 1, 2004, would be governed by
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1 the Continuation Clause of the Agreement and Basket 1 adjustments would remain in effect until
2 the Commission approves a new or revised Plan.

3 11. We, however, reconsider Decision 66772 with respect to further switched access
4 charge reductions. While the Continuation Clause could arguably be read to encompass further
5 switched access reductions, we believe that the intent of the parties was that there would be only
6 three switched access charge reductions under the Plan. We also find that, unlike the Basket 1
7 adjustment, the switched access charge provisions were not an integral part of the Plan, and thus,
8 a legitimate argument can be made that the Continuation Clause did not envision this provision's
9 continuation.

10 CONCLUSIONS OF LAW

11 1. Qwest is a public service corporation within the meaning of the Arizona
12 Constitution, Article XV, and under Arizona Revised Statutes, Title 40, generally.

13 2. The Commission has jurisdiction over Qwest and the subject matter of the issues
14 raised in Qwest's Application pursuant to A.R.S. §40-252.

15 3. The Findings of Fact are consistent with the Second Revised Settlement
16 Agreement and Price Cap Plan, as modified by Decision No. 63487.

17 4. Pursuant to A.R.S. §40-252, Qwest and all Parties were given notice of the
18 Commission's intent to take oral argument on the issues raised in Qwest's Application for
19 Rehearing. Qwest and all Parties were given notice and an opportunity to comment on any
20 proposed amendments prior the Commission's determination herein.

21 5. The Commission hereby reconsiders and amends Decision No. 66772 as set forth
22 herein.

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ORDER

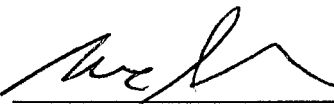

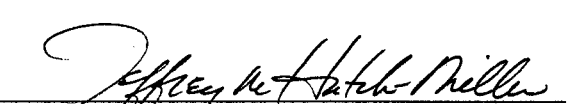
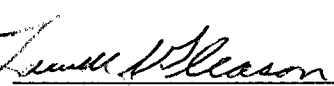
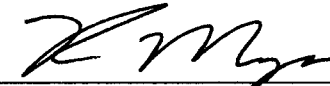
IT IS THEREFORE ORDERED, that Decision No. 66772 is hereby reconsidered to the extent set forth herein in the Findings of Fact above.

IT IS FURTHER ORDERED, that Qwest is authorized to make the corresponding adjustments to any rates for switched access charges reduced pursuant to Decision No. 66772, to be effective July 1, 2004.

IT IS FURTHER ORDERED, that in all other respects, except as set forth in the Findings of Fact herein, Decision No. 66772 is affirmed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
COMMISSIONER	COMMISSIONER	

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18th day of June, 2004.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT: _____

DISSENT: _____

1 Original and 15 copies of the foregoing
2 filed this 18th day of June, 2004
3 with:

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